

REMARKS

Claims 1-32 are pending in the application. Claims 1-27 and 29-32 stand rejected. Claims 1-14, 22-27 and 29-32 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent App. Pub. No. 2002/0114868 ("Lederman I"). Claims 15-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lederman I in view of U.S. Patent App. Pub. No. 2006/0251765 ("Lederman II"). Claim 28 stands objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

By the present amendment, claims 22 and 23 are amended, and claims 1-21, 25-28, and 30-32 are canceled without prejudice. Reconsideration and allowance of claims 22-24 and 29 are respectfully requested.

Claim 28 was objected to as being dependent upon a rejected base claim but was said to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. By the present amendment, independent claim 22 has been amended to incorporate each of the limitations of claim 28. Specifically, claim 22 has been amended to require "forming a reaction mixture by reacting a calcium compound with citric acid in an aqueous solution ***at a temperature of less than about 10°C*** to form a calcium citrate reaction product which has a mole ratio of calcium to citrate in the range of from about 1:2 to less than 2.5:2, and ***spray drying*** the reaction mixture ***at a temperature of less than about 10°C*** effective to provide the amorphous water-soluble calcium citrate salt in solid form, wherein the amorphous water-soluble calcium citrate salt, when dissolved in water to provide to about 10 mg calcium per fluid ounce, does not form a visible haze or sediment for at least about 2 days at ambient temperatures."

As recognized in the Office Action, Lederman I does not disclose such a method of forming an amorphous water-soluble calcium citrate salt including the steps of forming a reaction mixture and spray drying the reaction mixture at a temperature of less than about 10°C. Furthermore, the recited method would not have been obvious to a person of ordinary skill in the art at the time of the invention in view of Lederman I,

Application No. 10/781,106
Amendment dated May 9, 2007
Reply to the Office action of January 10, 2007

either alone or in combination with Lederman II. Lederman I and II, both alone and in combination, fail to teach or suggest a method of forming an amorphous water-soluble calcium citrate salt as recited in claim 22.¹ Accordingly, claim 22 and claims 23, 24, and 29, which depend therefrom, are allowable.

Applicant's additionally submit that the recent Supreme Court opinion of *KSR Int'l Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (2007), does not effect the allowability of the subject matter of claim 22. *KSR* addressed the issue of obviousness under §103(a) when the claim recites merely a combination of elements of the prior art. It is inapplicable to the present application in which claim 22 recites a method that is not disclosed in a reference or combination of references.

In view of the foregoing amendment and remarks, reconsideration and allowance of claims 22-24 and 29 are respectfully requested. The Commissioner is hereby authorized to charge any which may be required in this application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

Date: May 9, 2007
120 S. LaSalle Street, Suite 1600
Chicago, Illinois 60603-3406
Telephone: 312.577.7000
Facsimile: 312.577.7007

s/Sarah M. Walkington/
Sarah M. Walkington
Registration No. 55,803

¹ In this regard, Applicants note that Lederman II (filed on Jul. 13, 2006) is a continuation of App. No. 10/067,515 (filed on Feb. 4, 2002), which is, itself, a continuation of Lederman I (filed on May 21, 2001). Applicants respectfully submit that a close inspection of Lederman I and II reveals that the disclosure of the two applications is *substantively identical*. Lederman II does not disclose any subject matter not disclosed in Lederman I, and vice versa. Alternatively, should the Examiner determine that Applicants are mistaken and Lederman II does in fact disclose new matter that is not disclosed in Lederman I, then Lederman II is not entitled to Lederman I's May 21, 2001 filing date (for the purposes of being prior art under §102(e)) and Lederman II is not prior art to the present application. Applicants will gladly submit a declaration in this regard at the Examiner's request.